

**BEFORE THE  
U.S. DEPARTMENT OF ENERGY  
Washington, D.C. 20585**

In the Matter of:

**Fagor America, Inc.**  
(dishwashers; residential refrigerators,  
refrigerator-freezers, and freezers)

Case Number: 2013-CEW-19001

**NOTICE OF PROPOSED CIVIL PENALTY**

Date issued: April 15, 2013

Number of alleged violations: 1,825 (5 basic models; 365 days)

Maximum possible assessment: **\$365,000**

Proposed civil penalty: **\$36,500**

The U.S. Department of Energy ("DOE") Office of the General Counsel, Office of Enforcement, alleges that Fagor America, Inc. ("Fagor") has violated certain provisions of the Energy Policy and Conservation Act, 42 U.S.C. § 6291 *et seq.* ("the Act"), and 10 C.F.R. § 429.12.

Specifically, DOE alleges:

1. Fagor has manufactured<sup>1</sup> units of basic model FIM4825 and basic model FQ9925XUS, models of residential refrigerator-freezers, as defined in 10 C.F.R. § 430.2.
2. Fagor has distributed for at least 365 days, and continues to distribute, basic model FIM4825 and basic model FQ9925XUS in commerce in the United States.
3. Fagor has manufactured units of basic model LFA-073IT, basic model LFA-086XL, and basic model LFA-65ITX, models of dishwashers, as defined in 10 C.F.R. § 430.2.
4. Fagor has distributed for at least 365 days, and continues to distribute, basic model LFA-073IT, basic model LFA-086XL, and basic model LFA-65ITX in commerce in the United States.
5. All of the basic models listed in paragraphs 1 and 3 above are "covered product(s)." *See* 42 U.S.C. §§ 6291(2), 6292(a)(7), 6295(g).

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<sup>1</sup> "Manufacture" means to manufacture, produce, assemble, or import. 42 U.S.C. § 6291(10).

6. On May 5, 2011, Fagor agreed to pay \$6,000 after failing to submit certification reports for refrigerators and dishwashers. As part of that agreement, Fagor also agreed to certify all basic models of all covered products that it distributed in the United States.
7. Fagor failed to submit an annual certification report in 2012 for basic model FIM4825, basic model FQ9925XUS, basic model LFA-073IT, basic model LFA-086XL, and basic model LFA-65ITX prior to distributing these basic models in commerce in the U.S., as required by 10 C.F.R. §§ 429.12 and 429.20.
8. Failure to certify a covered product as required by 10 C.F.R. Part 429 is a prohibited act pursuant to 10 C.F.R. § 429.102(a)(1) and subject to civil penalty as described in 10 C.F.R. § 429.120.

**The following information is provided in question and answer format to help explain Fagor's legal obligations and options.**

*What do I do now?*

DOE is offering a settlement of **\$13,000** if you submit the signed Compromise Agreement within thirty (30) days of the date of this Notice. As part of that settlement, you must pay the fine within thirty (30) days of the date of issuance of an order adopting the Agreement ("the Adopting Order") and must properly certify—pursuant to valid test data—all basic models of all covered products that you are distributing in commerce in the U.S. within sixty (60) days of the date of the Adopting Order. If you do not submit the required certification documents within sixty (60) days of the date of the Adopting Order, you will be subject to the maximum penalty of \$200 per day per basic model for every day that you do not certify each basic model.

If you choose not to settle this case on the above terms, DOE may seek the **maximum penalty** (\$365,000) authorized by law. You have other options as described below.

*What are my other options?*

If you do *not* agree to DOE's settlement offer, you must select Option 1 or Option 2, below, within thirty (30) calendar days of the issuance of this Notice.

Option 1: You may elect to have DOE issue an order assessing a civil penalty. Failure to pay the assessed penalty within sixty (60) calendar days of the date of the order assessing such penalty will result in referral of the case to a U.S. District Court for an order affirming the assessment of the civil penalty. The District Court has the authority to review the law and the facts *de novo*.

Option 2: You may elect to have DOE refer this matter to an Administrative Law Judge ("ALJ") for an agency hearing on the record. Upon a finding of violation by the ALJ, DOE will issue an order assessing a civil penalty. This order may be appealed to the appropriate U.S. Court of Appeals.

*When must I respond?*

You must submit your signed Compromise Agreement within thirty (30) calendar days of the date of this Notice to pay the **lowest fine (\$13,000)**. If you do not wish to settle AND you wish to choose Option 1 as described above, you must notify DOE of your selection of Option 1 within thirty (30) calendar days of the date of this Notice. Otherwise, if you do not settle the case, DOE will refer the case to an ALJ as described in Option 2.

*How should I submit my response?*

To assure timely receipt, DOE strongly encourages you to submit your response by email. DOE accepts scanned images of signed documents (such as PDFs). Responses may be sent by any of the following methods:

By email to: James.Silvestro@hq.doe.gov  
By fax to: (202) 586-4224  
By mail to: James Silvestro  
Trial Attorney (GC-32)  
U.S. Department of Energy  
1000 Independence Ave., SW  
Washington, DC 20585

*What happens if I fail to respond?*

If you fail to respond within thirty (30) calendar days of the date of this Notice, or by the time of any extension granted by DOE, DOE will refer the case to an ALJ for a full administrative hearing (Option 2, above).

*What should I include in my response?*

- 1) If you wish to accept DOE's settlement offer, you should submit the signed Compromise Agreement (which is enclosed). If you do not wish to accept DOE's settlement offer, you should specify if you wish to elect Option 1; otherwise, DOE will proceed with Option 2, as described above.
- 2) Provide your Taxpayer Identification Number (TIN). The Debt Collection Improvement Act ("DCIA") requires all federal agencies to obtain the TIN in any case that may give rise to a debt to the government.

*How did you calculate the maximum possible assessment?*

Federal law sets a maximum civil penalty for each day that you fail to submit to DOE the required information for a covered product. By regulation, you must submit a certification report for each basic model. Therefore, your maximum penalty is calculated based on each day you distributed each basic model in commerce in the United States without having submitted a valid certification report. In the maximum penalty calculation in this Notice, DOE assumes that each basic model has been in distribution in the United States for at least 365 days. DOE is not pursuing violations more than 1 year old at this time. DOE may pursue violations up to five (5) years old if the case goes to hearing. The maximum penalty is \$200 per day. 10 C.F.R. § 429.120.

If you have any questions, please contact James Silvestro by phone at (202) 586-4224 or email at [James.Silvestro@hq.doe.gov](mailto:James.Silvestro@hq.doe.gov).

Issued by:

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Laura L. Barhydt  
Assistant General Counsel for  
Enforcement